

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1038700-001-B

In the Matter of:

X

X

Employer

Department

DECISION
AFFIRMED

The **EMPLOYER**, through counsel, petitions for a hearing from the Reconsidered Determination issued March 22, 2004, which affirmed the Amended Determinations of Unemployment Tax Rates for calendar years 1999 and 2000, issued on September 13, 2001.

The appeal having been timely filed, the Appeals Board has jurisdiction in this matter pursuant to A.R.S. § 23-732(A).

We have carefully reviewed the record in this case, and have considered the contentions raised in the petition.

In its initial review of this case, the Board determined that the taking of additional evidence was necessary to a proper adjudication of the issue of the correctness of the Amended Determinations of Unemployment Tax Rate for Calendar Years 1999 and 2000.

A hearing was held on August 7, 2007, at 10:00 a.m., before William E. Good, an Administrative Law Judge, to take evidence on the following issue:

Whether the Determination of Unemployment Insurance Tax Rate for Calendar Years 1999 and 2000, issued September 13, 2001, is correct.

The following persons appeared at the hearing:

X

Employer witness

X	Employer witness
X	Employer witness
X	Employer counsel
KATHERIN WHALEY	Department witness
ROBERT DUNN	Department counsel

The witnesses present at the hearing were sworn and gave testimony. Documents marked and identified as Board Exhibits 1 through 38 were admitted into evidence.

THE APPEALS BOARD FINDS the facts pertinent to the issue before us and necessary to our decision are:

1. A Determination of Unemployment Insurance Liability was sent by certified mail on January 15 1999, to the Employer's last known address of record. The Determination informed the Employer that it was a successor to a liable employer (X) and that its tax rate was based upon its predecessor's experience rating account. That had been transferred to the Employer, and the Employer would be held equally liable for any taxes, penalties or interest due and unpaid by the predecessor (Tr. p. 18; Bd. Exh. 5).
2. A Determination of Unemployment Insurance Liability was sent by certified mail on January 15 1999, to the Employer's last known address of record. The Determination informed the Employer that it was successor to another liable employer (X) and that its tax rate was based upon its predecessor's experience rating account. That had been transferred to the Employer, and the Employer would be held equally liable for any taxes, penalties or interest due and unpaid by the predecessor (Tr. p. 18; Bd. Exh. 6).
3. A Determination of Unemployment Insurance Liability was sent by certified mail on January 15 1999, to the Employer's last known address of record. The Determination informed the Employer that it was successor to another liable employer (X) and that its tax rate was based upon its predecessor's experience rating account. That had been transferred to the Employer, and the Employer would be held equally liable for any taxes, penalties

or interest due and unpaid by the predecessor (Tr. p. 18; Bd. Exh. 7).

4. The Employer filed a late request for reconsideration of those determinations and they became final (Tr. pp. 18, 19, 23; Exh. 8).
5. Despite the Employer's late appeals from the Determinations of Liability, and based on the Employer's assertion that the Employer's letter of January 7, 1999 (Tr. p. 17; Bd. Exh. 2) was not correct, the Department amended the previously issued Determinations of Unemployment Tax Rate for Calendar Years 1999 and 2000. The Department did this by reversing the transfers and stating the true functions of the Employer (Tr. pp. 32, 33).
6. An Amended Determination of Unemployment Tax Rate for Calendar Year 1999 was sent by mail on September 13, 2001, to the Employer's last known address of record. The prior tax rate had been .75%. The amended Tax Rate was 2.70%. This was because the Employer had not reported any wages for the period in question, and had a zero reserve ratio. The Determination advised the Employer that the Determination would become final unless a written request for review was filed within 15 days of the mailing date as provided in A.R.S. § 23-732 (Tr. pp. 24-26; Bd. Exh. 12).
7. An Amended Determination of Unemployment Tax Rate for Calendar Year 2000 was sent by mail on September 13, 2001, to the Employer's last known address of record. The Employer's prior tax rate for 2000 was .87%. The amended rate was 1.61%. The Determination advised the Employer that the Determination would become final unless a written request for review was filed within 15 days of the mailing date as provided in A.R.S. § 23-732 (Tr. pp. 22, 24; Bd. Exh. 11).
8. On September 26, 2001, the Employer filed a timely request for review of both Amended Determinations of Unemployment Tax Rate (Bd. Exh. 13).

9. On March 22, 2004, the Department issued a decision advising the Employer that the Amended Determinations of Unemployment Tax Rates for Calendar Years 1999 and 2000 were correctly computed (Bd. Exhs. 19, 20). The Employer timely appealed (Bd. Exh. 21).
10. The Reserve balance for the Employer as of June 30, 1998, was \$X. The Unemployment Insurance taxes paid by the Employer for the period June 30, 1998 through July 31, 1999, were \$X. The Employer's share of charges for benefits paid from June 30, 1998 through July 31, 1999, was \$0.00. The reserve balance as of June 30, 1999, was \$X. Dividing this reserve balance by the average taxable payroll of the Employer for the three year period ending June 30, 1999, (\$X), gives a reserve ratio of 1.29. The adjusted tax rate for 2000, for such a reserve ratio, is 1.61% (Bd. Exhs. 9-11).

The issue properly before the Board is whether the Determination (sic) of Unemployment Insurance Tax Rate for Calendar Years 1999 and 2000, issued September 13, 2001, is (sic) correct.

Arizona Revised Statutes § 23-732(A) provides in pertinent part:

The department shall promptly notify each employer of his rate of Contributions as determined for any calendar year. The determination shall become conclusive and binding upon the employer unless, within fifteen days after the mailing of notice thereof to his last known address or in the absence of mailing, within fifteen days after delivery of the notice, the employer files an application for review and redetermination, setting forth his reasons therefor. The department shall reconsider the rate... . The Employer shall be promptly notified of the department's denial of his application, or of the department's redetermination... .

Arizona Revised Statutes § 23-729, provides in pertinent part:

If an employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on June 30 of the preceding calendar year, the employer shall have a rate computed in accordance with section 23-730. ...

Arizona Revised Statutes § 23-730, provides in pertinent part:

For calendar year 1985 and each calendar year thereafter, variations from the standard rate of contribution shall be determined in accordance with the following requirements:

* * *

In this case, the evidence of record establishes that the figures on Board Exhibits 11 and 12 are correct. The Employer did not dispute the figures, but did object to the parts of the payroll being attributed to the Employer. The Department used the information given to it by the Employer just prior to issuance of the September 13, 2001 Amended Determinations (Tr. p. 20; Bd. Exhs. 9, 10). For 2000, an unadjusted rate was obtained from paragraph 2 of Arizona Revised Statutes § 23-730, in effect at the time. Thereafter, an adjusted rate of 1.61% was obtained from the adjustment method of Arizona Revised Statutes § 23-730, in effect at the time. Accordingly,

THE APPEALS BOARD AFFIRMS the decision of the Department based upon the evidence of record.

The Employer's application for review and redetermination of the Determination of Unemployment Tax Rate for Calendar Years 1999 and 2000 was properly denied. The Employer's tax rate for calendar year 1999 is 2.70%. The Employer's tax rate for calendar year 2000 is 1.61%.

DATED:

APPEALS BOARD

WILLIAM G. DADE, Chairman

HUGO M. FRANCO, Member

MARILYN J. WHITE, Member

PERSONS WITH DISABILITIES: Under the Americans with Disabilities Act, the Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. For example, this means that if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. Please contact the Appeals Board Chairman at (602) 229-2806.

RIGHT TO FURTHER REVIEW BY THE APPEALS BOARD

Pursuant to A.R.S. § 23-672(F), the final date for filing a request for review is _____.

**INSTRUCTIONS FOR FILING A REQUEST FOR
REVIEW OF THE BOARD'S DECISION**

1. A request for review must be filed in writing within 30 calendar days from the mailing date of the Appeals Board's decision. A request for review is considered filed on the date it is mailed via the United States Postal Service, as shown by the postmark, to any public employment office in the United States or Canada, or to the Appeals Board, 1140 E. Washington, Box 14, [Suite 104], Phoenix, Arizona 85034. Telephone: (602) 229-2806. A request for review may also be filed in person at the above locations or transmitted by a means other than the United States Postal Service. If it is filed in person or transmitted by a means other than the United States Postal Service, it will be considered filed on the date it is received.
 2. Parties may be represented in the following manner:

An individual party (either claimant or opposing party) may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.
 3. The request for review must be signed by the proper party and must be accompanied by a memorandum stating the reasons why the appeals board's decision is in error and containing appropriate citations of the record, rules and other authority. Upon motion, and for good cause, the Appeals Board may extend the time for filing a request for review. The timely filing of such a request for review is a prerequisite to any further appeal.
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A copy of the foregoing was mailed on
to:

(x) Er: X.

Acct. No: X

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By: _____
For The Appeals Board